

SENATE No. 00063

The Commonwealth of Massachusetts

PRESENTED BY:

Karen E. Spilka

To the Honorable Senate and House of Representatives of the Commonwealth of Massachusetts in General Court assembled:

The undersigned legislators and/or citizens respectfully petition for the passage of the accompanying bill:

An Act revising the interstate compact on the placement of children.

PETITION OF:

NAME:	DISTRICT/ADDRESS:
<i>Karen E. Spilka</i>	<i>Second Middlesex and Norfolk</i>
<i>Kay Khan</i>	<i>11th Middlesex</i>
<i>Carolyn C. Dykema</i>	<i>8th Middlesex</i>

SENATE No. 00063

By Ms. Spilka, petition (accompanied by bill, Senate, No. 63) of Dykema, Khan and Spilka for legislation to revise the interstate compact on the placement of children [Joint Committee on Children, Families and Persons with Disabilities].

[SIMILAR MATTER FILED IN PREVIOUS SESSION
SEE
SENATE
, NO. 2211 OF 2009-2010.]

The Commonwealth of Massachusetts

In the Year Two Thousand Eleven

An Act revising the interstate compact on the placement of children.

Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:

1 SECTION 1. Chapter 452 of the acts of 1963 is hereby amended by striking out section
2 1 and inserting in place thereof the following section:

3 Section 1. A compact is hereby entered into with all jurisdictions legally joining
4 therein in substantially the following form:

5 INTERSTATE COMPACT FOR THE PLACEMENT OF CHILDREN

6 ARTICLE I. PURPOSE

7 The purpose of this compact is to:

8 (A) provide a process through which children subject to this compact are placed in safe
9 and suitable homes in a timely manner;

10 (B) facilitate ongoing supervision of a placement, the delivery of services, and
11 communication between the states;

12 (C) provide operating procedures that will ensure that children are placed in safe and
13 suitable homes in a timely manner;

14 (D) provide for the promulgation and enforcement of administrative rules
15 implementing this compact and regulating the covered activities of the member states;

16 (E) provide for uniform data collection and information sharing between member
17 states under this compact;

18 (F) promote coordination between this compact, the interstate compact for juveniles,
19 the interstate compact on adoption and medical assistance and other compacts affecting the
20 placement of and which provide services to children otherwise subject to this compact;

21 (G) provide for a state's continuing legal jurisdiction and responsibility for placement
22 and care of a child that it would have had if the placement were intrastate; and

23 (H) provide for the promulgation of guidelines, in collaboration with Indian tribes, for
24 interstate cases involving Indian children as is or may be permitted by federal law.

25 ARTICLE II. DEFINITIONS

26 As used in this compact, the following words shall have the following meanings unless
27 the context clearly requires otherwise:

28 “Approved placement”, a placement that the public child placing agency in the
29 receiving state has determined is both safe and suitable for the child.

30 “Assessment”, an evaluation of a prospective placement by a public child placing
31 agency in the receiving state to determine if the placement meets the individualized needs of the
32 child, including but not limited to, the child's safety and stability, health and well-being and
33 mental, emotional, and physical development.

34 “Certification”, to attest, declare or swear to before a judge or notary public.

35 “Child”, an individual who has not attained the age of 18 years.

36 “Default”, the failure of a member state to perform the obligations or responsibilities
37 imposed upon it by this compact, the by-laws or rules of the Interstate Commission.

38 “Home study”, an evaluation of a home environment conducted in accordance with the
39 applicable requirements of the state in which the home is located, which documents the
40 preparation and suitability of the placement resource for placement of a child in accordance with
41 the laws and requirements of that state.

42 “Indian tribe”, a tribe, band, nation or other organized group or community of Indians
43 recognized as eligible for services provided to Indians by the Secretary of the Interior because of
44 the status of its members as Indians, including any native village as defined in section 3 (c) of the
45 Alaska Native Claims settlement Act, 43 USC Section 1602(c).

46 “Interstate Commission”, the Interstate Commission for the Placement of Children
47 created under Article VIII of this compact.

48 “Jurisdiction”, the power and authority of a court to hear and decide matters.

49 "Legal risk placement", a placement made preliminary to an adoption where the
50 prospective adoptive parents acknowledge in writing that a child may be ordered returned to the
51 sending state or the birth mother's state of residence, if different from the sending state, and a
52 final decree of adoption shall not be entered in any jurisdiction until all required consents are
53 obtained or are dispensed with in accordance with applicable law.

54 "Member state", a state that has enacted this compact.

55 "Non-custodial parent", a person who, at the time of the commencement of court
56 proceedings in the sending state, does not have sole legal custody or joint legal custody of the
57 child, and who is not the subject of allegations or findings of child abuse or neglect.

58 "Non-member state", a state which has not enacted this compact.

59 "Notice of residential placement", information regarding a placement into a residential
60 facility provided to the receiving state including, but not limited to, the name, date and place of
61 birth of the child, the identity and address of the parent or legal guardian, evidence of authority
62 to make the placement, the name and address of the facility in which the child will be placed and
63 information regarding a discharge and any unauthorized absence from the facility.

64 "Placement", the act by a public or private child placing agency intended to arrange for
65 the care or custody of a child in another state.

66 "Private child placing agency", a private corporation, agency, foundation, institution, or
67 charitable organization, or a private person or attorney that facilitates, causes or is involved in
68 the placement of a child from one state to another and that is not an instrumentality of the state or
69 acting under color of state law.

70 “Provisional placement”, a determination made by the public child placing agency in
71 the receiving state that the proposed placement is safe and suitable and, to the extent allowable,
72 the receiving state has temporarily waived its standards or requirements otherwise applicable to
73 prospective foster or adoptive parents so as to not delay the placement. Completion of the
74 receiving state requirements regarding training for prospective foster or adoptive parents shall
75 not delay an otherwise safe and suitable placement.

76 “Public child placing agency”, a government child welfare agency or child protection
77 agency or a private entity under contract with such an agency, regardless of whether the agency
78 or entity acts on behalf of a state, county, municipality or other governmental unit and which
79 facilitates, causes or is involved in the placement of a child from one state to another.

80 “Receiving state”, the state to which a child is sent, brought or caused to be sent or
81 brought.

82 “Relative”, a person who is related to the child as a parent, step-parent, sibling by half
83 or whole blood or by adoption, grandparent, aunt, uncle, first cousin or a non-relative with such
84 significant ties to the child that such person may be regarded as a relative as determined by a
85 court of competent jurisdiction in the sending state.

86 “Residential facility”, a facility providing a level of care that is sufficient to substitute
87 for parental responsibility or foster care, and is beyond what is needed for assessment or
88 treatment of an acute condition; but not including institutions primarily educational in character,
89 hospitals or other medical facilities.

90 “Rule”, a written directive, mandate, standard or principle issued by the Interstate
91 Commission promulgated under Article XI of this compact that is of general applicability and

92 that implements, interprets or prescribes a policy or provision of the compact. “Rule” has the
93 force and effect of an administrative rule in a member state, and includes the amendment, repeal,
94 or suspension of an existing rule.

95 “Sending state”, the state from which the placement of a child is initiated.

96 “Service member’s permanent duty station”, the military installation where an active
97 duty Armed Services member is currently assigned and is physically located under competent
98 orders that do not specify the duty as temporary.

99 “Service member’s state of legal residence”, the state in which the active duty Armed
100 Services member is considered a resident for tax and voting purposes.

101 “State”, a state of the United States, the District of Columbia, the Commonwealth of
102 Puerto Rico, the U.S. Virgin Islands, Guam, American Samoa, the Northern Marianas Islands or
103 any other territory of the United States.

104 “State court”, a judicial body of a state that is vested by law with responsibility for
105 adjudicating cases involving abuse, neglect, deprivation, delinquency or status offenses of
106 individuals who have not attained the age of 18 years.

107 “Supervision”, monitoring provided by the receiving state once a child has been placed
108 in a receiving state pursuant to this compact.

109 ARTICLE III. APPLICABILITY

110 (A) Except as otherwise provided in section (B), this compact shall apply to:

111 (1) the interstate placement of a child subject to ongoing court jurisdiction in
112 the sending state, due to allegations or findings that the child has been abused, neglected or
113 deprived as defined by the laws of the sending state; provided, however, that the placement of
114 the child into a residential facility shall only require notice of residential placement to the
115 receiving state before the placement;

116 (2) the interstate placement of a child adjudicated delinquent or
117 unmanageable based on the laws of the sending state and subject to ongoing court jurisdiction of
118 the sending state if:

119 (a) the child is being placed in a residential facility in another
120 member state and is not covered under another compact; or

121 (b) the child is being placed in another member state and the
122 determination of safety and suitability of the placement and services required is not provided
123 through another compact; and

124 (3) the interstate placement of any child by a public child placing agency or
125 private child placing agency as a preliminary step to a possible adoption.

126 (B) The provisions of this compact shall not apply to:

127 (1) the interstate placement of a child in a custody proceeding in which a
128 public child placing agency is not a party; provided, however, that the placement is not intended
129 to effectuate an adoption;

130 (2) the interstate placement of a child with a non-relative in a receiving state
131 by a parent with the legal authority to make the placement; provided, however, that the
132 placement is not intended to effectuate an adoption;

133 (3) the interstate placement of a child by one relative with the lawful
134 authority to make the placement directly with a relative in a receiving state.

135 (4) the placement of a child, not subject to section (a), into a residential
136 facility by the child's parent.

137 (5) The placement of a child with a non-custodial parent; provided that:

138 (a) the non-custodial parent proves, to the satisfaction of a court of
139 competent jurisdiction in the sending state, a substantial relationship with the child; and

140 (b) a court of competent jurisdiction in the sending state makes a
141 written finding that placement with the non-custodial parent is in the best interests of the child;
142 and

143 (c) a court of competent jurisdiction in the sending state dismisses
144 its jurisdiction in interstate placements in which the public child placing agency is a party to the
145 proceeding.

146 (6) A child entering the United States from a foreign country for the purpose
147 of adoption or leaving the United States to go to a foreign country for the purpose of adoption in
148 that country.

149 (7) Cases in which a United States citizen child living overseas with his
150 family, at least 1 of whom is in the armed services of the United States and stationed overseas, is
151 removed and placed in a state.

152 (8) The sending of a child by a public child placing agency or a private child
153 placing agency for a visit as defined by the rules of the Interstate Commission.

154 (C) For purposes of determining the applicability of this compact to the placement of a
155 child with a family in the armed services of the United States, the public child placing agency or
156 private child placing agency may choose the state of the service member's permanent duty
157 station or the service member's declared legal residence.

158 (D) Nothing in this compact shall be construed to prohibit the concurrent application
159 of the provisions of this compact with other applicable interstate compacts including the
160 Interstate Compact for Juveniles and the Interstate Compact on Adoption and Medical
161 Assistance. The Interstate Commission may, in cooperation with other interstate compact
162 commissions having responsibility for the interstate movement, placement or transfer of
163 children, promulgate like rules to ensure the coordination of services, timely placement of
164 children and the reduction of unnecessary or duplicative administrative or procedural
165 requirements.

166 ARTICLE IV. JURISDICTION

167 (A) Except as provided in subsection (H) and paragraphs 2 and 3 of subsection (B) of
168 Article V, concerning private and independent adoptions and in interstate placements in which
169 the public child placing agency is not a party to a custody proceeding, the sending state shall
170 retain jurisdiction over a child with respect to all matters of custody and disposition of the child

171 which it would have had if the child had remained in the sending state. Such jurisdiction shall
172 also include the power to order the return of the child to the sending state.

173 (B) When an issue of child protection or custody is brought before a court in the
174 receiving state, that court shall confer with the court of the sending state to determine the most
175 appropriate forum for adjudication.

176 (C) In a case that is before a court and subject to this compact, the taking of testimony
177 for a hearing before any judicial officer may occur in person, by telephone, by audio-video
178 conference or by such other means as approved by the rules of the Interstate Commission; and
179 judicial officers may communicate with other judicial officers and persons involved in the
180 interstate process as may be permitted by their Canons of Judicial Conduct and any rules
181 promulgated by the Interstate Commission.

182 (D) In accordance with its own laws, the court in the sending state shall have authority
183 to terminate its jurisdiction if:

184 (1) the child is reunified with the parent in the receiving state who is
185 the subject of allegations or findings of abuse or neglect, only with the concurrence of the public
186 child placing agency in the receiving state;

187 (2) the child is adopted;

188 (3) the child reaches the age of majority under the laws of the sending
189 state;

190 (4) the child achieves legal independence under the laws of the
191 sending state;

192 (5) a guardianship is created by a court in the receiving state with the
193 concurrence of the court in the sending state;

194 (6) an Indian tribe has petitioned for and received jurisdiction from the
195 court in the sending state; or

196 (7) the public child placing agency of the sending state requests
197 termination and has obtained the concurrence of the public child placing agency in the receiving
198 the state.

199 (E) When a court in a sending state terminates its jurisdiction, it shall notify the child
200 placing agency in the receiving state. .

201 (F) Nothing in this Article shall defeat a claim of jurisdiction by a court in a receiving
202 state sufficient to deal with an act of truancy, delinquency, crime or behavior involving a child as
203 defined by the laws of the receiving state committed by the child in the receiving state which
204 would be a violation of its laws.

205 (G) Nothing in this Article shall limit the ability of the receiving state to take
206 emergency jurisdiction for the protection of the child.

207 (H) The substantive laws of the state in which an adoption will be finalized shall
208 solely govern all issues relating to the adoption of the child and the court in which the adoption
209 proceeding is filed shall have subject matter jurisdiction regarding all substantive issues relating
210 to the adoption, except:

211 (1) when the child is a ward of another court that established
212 jurisdiction over the child prior to the placement;

213 (2) when the child is in the legal custody of a public agency in the
214 sending state; or

215 (3) when a court in the sending state has otherwise appropriately
216 assumed jurisdiction over the child, prior to the submission of the request for approval of
217 placement.

218 (I) A final decree of adoption shall not be entered in any jurisdiction until the
219 placement is authorized as an “approved placement” by the public child placing agency in the
220 receiving state.

221 ARTICLE V. PLACEMENT EVALUATION

222 (A) Before sending, bringing or causing a child to be sent or brought into a receiving
223 state, the public child placing agency shall provide a written request for assessment to the
224 receiving state.

225 (B) For placements by a private child placing agency, a child may be sent or brought,
226 or caused to be sent or brought, into a receiving state, upon receipt and immediate review of the
227 required content in a request for approval of a placement in both the sending and receiving state
228 public child placing agency. The required content to accompany a request for approval shall the
229 following:

230 (1) a request for approval identifying the child, birth parent or parents,
231 the prospective adoptive parent or parents and the supervising agency, signed by the person
232 requesting approval;

233 (2) the appropriate consents or relinquishments signed by the birth
234 parents in accordance with the laws of the sending state, or where permitted the laws of the state
235 where the adoption will be finalized;

236 (3) certification by a licensed attorney or authorized agent of a private
237 adoption agency that the consent or relinquishment is in compliance with the applicable laws of
238 the sending state or where permitted the laws of the state where finalization of the adoption will
239 occur;

240 (4) a home study; and

241 (5) an acknowledgment of legal risk signed by the prospective
242 adoptive parents.

243 (C) The sending state and the receiving state may request additional information or
244 documents prior to finalization of an approved placement, but may not delay travel by the
245 prospective adoptive parents with the child if the required content for approval has been
246 submitted, received and reviewed by the public child place agency in both the sending state and
247 the receiving state.

248 (D) Approval from the public child placing agency in the receiving state for a
249 provisional or approved placement is required as provided for in the rules of the Interstate
250 Commission.

251 (E) The procedures for making and the request for an assessment shall contain all
252 information and be in such form as provided for in the rules of the Interstate Commission.

253 (F) Upon receipt of a request from the public child placing agency of the sending
254 state, the receiving state shall initiate an assessment of the proposed placement to determine its
255 safety and suitability. If the proposed placement is a placement with a relative, the public child
256 placing agency of the sending state may request a determination for a provisional placement.

257 (G) The public child placing agency in the receiving state may request from the public
258 child placing agency or the private child placing agency in the sending state, and shall be entitled
259 to receive, supporting or additional information necessary to complete the assessment or approve
260 the placement.

261 (H) The public child placing agency in the receiving state shall approve a provisional
262 placement and complete or arrange for the completion of the assessment within the timeframes
263 established by the rules of the Interstate Commission.

264 (I) For a placement by a private child placing agency, the sending state shall not
265 impose any additional requirements to complete the home study that are not required by the
266 receiving state, unless the adoption is finalized in the sending state.

267 (J) The Interstate Commission may develop uniform standards for the assessment of
268 the safety and suitability of interstate placements.

269 ARTICLE VI. PLACEMENT AUTHORITY

270 (A) Except as otherwise provided in this compact, a child subject to this compact shall
271 not be placed in a receiving state until approval for the placement is obtained.

272 (B) If the public child placing agency in the receiving state does not approve the
273 proposed placement then the child shall not be placed. The receiving state shall provide written

274 documentation of the determination in accordance with the rules promulgated by the Interstate
275 Commission. That determination shall not be subject to judicial review in the sending state.

276 (C) If the proposed placement is not approved, any interested party shall have standing
277 to seek an administrative review of the receiving state's determination.

278 (1) The administrative review and any further judicial review associated with the
279 determination shall be conducted in the receiving state pursuant to its applicable Administrative
280 Procedures Act.

281 (2) If a determination not to approve the placement of the child in the receiving state is
282 overturned upon review, the placement shall be deemed approved, provided however that all
283 administrative or judicial remedies have been exhausted or the time for such remedies has
284 passed.

285 ARTICLE VII. PLACING AGENCY RESPONSIBILITY

286 (A) For the interstate placement of a child made by a public child placing agency or
287 state court:

288 (1) the public child placing agency in the sending state shall have financial
289 responsibility for:

290 (a) the ongoing support and maintenance for the child during the period of
291 the placement, unless otherwise provided for in the receiving state; and

292 (b) as determined by the public child placing agency in the sending state,
293 services for the child beyond the public services for which the child is eligible in the receiving
294 state;

295 (2) the receiving state shall only have financial responsibility for:

296 (a) any assessment conducted by the receiving state; and

297 (b) supervision conducted by the receiving state at the level necessary to
298 support the placement as agreed upon by the public child placing agencies of the receiving and
299 sending state; and

300 (3) nothing in this compact shall prohibit public child placing agencies in the sending
301 state from entering into agreements with licensed agencies or persons in the receiving state to
302 conduct assessments and provide supervision.

303 (B) For the placement of a child by a private child placing agency preliminary to a
304 possible adoption, the private child placing agency shall be:

305 (1) legally responsible for the child during the period of placement as provided for in
306 the law of the sending state until the finalization of the adoption; and

307 (2) financially responsible for the child absent a contractual agreement to the
308 contrary.

309 (C) A private child placing agency shall be responsible for any assessment conducted
310 in the receiving state and any supervision conducted by the receiving state at the level required
311 by the laws of the receiving state or the rules of the Interstate Commission.

312 (D) The public child placing agency in the receiving state shall provide timely
313 assessments, as provided for in the rules of the Interstate Commission.

314 (E) The public child placing agency in the receiving state shall provide, or arrange for
315 the provision of, supervision and services for the child, including timely reports, during the
316 period of the placement.

317 (F) Nothing in this compact shall be construed as to limit the authority of the public
318 child placing agency in the receiving state from contracting with a licensed agency or person in
319 the receiving state for an assessment or the provision of supervision or services for the child or
320 otherwise authorizing the provision of supervision or services by a licensed agency during the
321 period of placement.

322 (G) Each member state shall provide for coordination among its branches of
323 government concerning the state's participation in, and compliance with, the compact and
324 Interstate Commission activities, through the creation of an advisory council or use of an existing
325 body or board.

326 (H) Each member state shall establish a central state compact office, which shall be
327 responsible for state compliance with the compact and the rules of the Interstate Commission.

328 (I) The public child placing agency in the sending state shall oversee compliance with
329 the provisions of the Indian Child Welfare Act, 25 USC Section 1901 et seq. for placements
330 subject to this compact, before placement.

331 (J) With the consent of the Interstate Commission, a state may enter into limited
332 agreements that facilitate the timely assessment and provision of services and supervision of
333 placements under this compact.

334 ARTICLE VIII. INTERSTATE COMMISSION FOR THE PLACEMENT OF CHILDREN

335 The member states hereby establish, by way of this compact, a commission known as
336 the “Interstate Commission for the Placement of Children.” The activities of the Interstate
337 Commission are the formation of public policy and are a discretionary state function.

338 (A) The Interstate Commission shall be a joint commission of the member states and shall
339 have the responsibilities, powers and duties set forth herein, and such additional powers as may
340 be conferred upon it by subsequent concurrent action of the respective legislatures of the member
341 states.

342 (B) The Interstate Commission shall consist of 1 commissioner from each member state who
343 shall be appointed by the executive head of the state human services administration with ultimate
344 responsibility for the child welfare program. The appointed commissioner shall have the legal
345 authority to vote on policy related matters governed by this compact binding the state.

346 (1) Each member state represented at a meeting of the Interstate Commission is entitled to 1
347 vote.

348 (2) A majority of the member states shall constitute a quorum for the transaction of business,
349 unless a larger quorum is required by the by-laws of the Interstate Commission.

350 (3) A representative shall not delegate a vote to another member state.

351 (4) A representative may delegate voting authority to another person from the representative’s
352 state for a specified meeting.

353 (C) In addition to the commissioners of each member state, the Interstate Commission shall
354 include persons who are members of interested organizations as defined in the by-laws or rules

355 of the Interstate Commission. Such members shall be ex officio and shall not be entitled to vote
356 on any matter before the Interstate Commission.

357 (D) The Interstate Commission shall establish an executive committee which shall have the
358 authority to administer the day-to-day operations and administration of the Interstate
359 Commission, but shall not have the power to engage in rulemaking.

360 ARTICLE IX. POWERS AND DUTIES OF THE INTERSTATE COMMISSION

361 The Interstate Commission shall have the following powers:

362 (A) To promulgate rules and take all necessary actions to effect the goals, purposes and
363 obligations as enumerated in this compact.

364 (B) To provide for dispute resolution among member states.

365 (C) To issue, upon request of a member state, advisory opinions concerning the meaning or
366 interpretation of the interstate compact, its by-laws, rules or actions.

367 (D) To enforce compliance with this compact or the by-laws or rules of the Interstate
368 Commission, pursuant to Article XII.

369 (E) Collect standardized data concerning the interstate placement of children subject to this
370 compact as directed through its rules which shall specify the data to be collected, the means of
371 collection and data exchange and reporting requirements.

372 (F) To establish and maintain offices as may be necessary for the transacting of its business.

373 (G) To purchase and maintain insurance and bonds.

374 (H) To hire or contract for services of personnel or consultants as necessary to carry out its
375 functions under the compact and establish personnel qualification policies, and rates of
376 compensation.

377 (I) To establish and appoint committees and officers including, but not limited to, an
378 executive committee as required by Article X.

379 (J) To accept any and all donations and grants of money, equipment, supplies, materials and
380 services and to receive, utilize and dispose thereof.

381 (K) To lease, purchase, accept contributions or donations of, or otherwise to own, hold,
382 improve or use any property, real, personal or mixed.

383 (L) To sell, convey, mortgage, pledge, lease, exchange, abandon, or otherwise dispose of any
384 property, real, personal or mixed.

385 (M) To establish a budget and make expenditures.

386 (N) To adopt a seal and by-laws governing the management and operation of the Interstate
387 Commission.

388 (O) To report annually to the legislatures, governors, the judiciary and state advisory councils
389 of the member states concerning the activities of the Interstate Commission during the preceding
390 year. Such reports shall also include any recommendations that may have been adopted by the
391 Interstate Commission.

392 (P) To coordinate and provide education, training and public awareness regarding the
393 interstate movement of children for officials involved in such activity.

394 (Q) To maintain books and records in accordance with the by-laws of the Interstate
395 Commission.

396 (R) To perform functions necessary or appropriate to achieve the purposes of this compact.

397 ARTICLE X. ORGANIZATION AND OPERATION OF THE INTERSTATE COMMISSION

398 (A) By-laws

399 (1) Within 12 months after the first Interstate Commission meeting, the Interstate
400 Commission shall adopt by-laws to govern its conduct as may be necessary or appropriate to
401 carry out the purposes of the compact.

402 (2) The by-laws and rules of the Interstate Commission shall establish conditions and
403 procedures under which the Interstate Commission shall make its information and official
404 records available to the public for inspection or copying. The Interstate Commission may
405 exempt from disclosure information or official records to the extent that disclosure would
406 adversely affect personal privacy rights or proprietary interests.

407 (B) Meetings

408 (1) The Interstate Commission shall meet at least once each calendar year. The
409 chairperson may call additional meetings and, upon the request of a simple majority of the
410 member states, shall call additional meetings.

411 (2) The Interstate Commission shall give public notice of all meetings and all
412 meetings shall be open to the public, except as set forth in the rules or as otherwise provided in
413 the compact. The Interstate Commission and its committees may close a meeting, or portion
414 thereof, where it determines by two-thirds vote that an open meeting would be likely to:

415 (a) relate solely to the Interstate Commission's internal personnel
416 practices and procedures;

417 (b) disclose matters specifically exempted from disclosure by federal
418 law;

419 (c) disclose financial or commercial information which is privileged,
420 proprietary or confidential in nature;

421 (d) involve accusing a person of a crime, or formally censuring a
422 person;

423 (e) disclose information of a personal nature where disclosure would
424 constitute a clearly unwarranted invasion of personal privacy or physically endanger 1 or more
425 persons;

426 (f) disclose investigative records compiled for law enforcement purposes; or

427 (g) specifically relate to the Interstate Commission's participation in a
428 civil action or other legal proceeding.

429 (3) For a meeting, or portion of a meeting, closed pursuant to paragraph (2), the
430 Interstate Commission's legal counsel or designee shall certify that the meeting may be closed
431 and shall reference each relevant exemption provision. The Interstate Commission shall keep
432 minutes which shall fully and clearly describe all matters discussed in a meeting and shall
433 provide a full and accurate summary of actions taken, and the reasons therefore, including a
434 description of the views expressed and the record of a roll call vote. All documents considered in
435 connection with an action shall be identified in the minutes. All minutes and documents of a

436 closed meeting shall remain under seal, subject to release by a majority vote of the Interstate
437 Commission or by court order.

438 (4) The by-laws may provide for meetings of the Interstate Commission to be
439 conducted by telecommunication or other electronic communication.

440 (C) Officers and Staff

441 (1) The Interstate Commission may, through its executive committee, appoint or
442 retain a staff director for such period, upon such terms and conditions and for such compensation
443 as the Interstate Commission may consider appropriate. The staff director shall serve as
444 secretary to the Interstate Commission, but shall not have a vote. The staff director may hire and
445 supervise such other staff as may be authorized by the Interstate Commission.

446 (2) The Interstate Commission shall elect, from among its members, a chairperson
447 and a vice chairperson of the executive committee and other necessary officers, each of whom
448 shall have such authority and duties as may be specified in the by-laws.

449 (D) Qualified Immunity, Defense and Indemnification

450 (1) The Interstate Commission's staff director and its employees shall be immune
451 from suit and liability, either personally or in their official capacity, for a claim for damage to or
452 loss of property or personal injury or other civil liability caused or arising out of or relating to an
453 actual or alleged act, error or omission that occurred, or that such person had a reasonable basis
454 for believing occurred within the scope of Commission employment, duties or responsibilities;
455 provided, however, that such person shall not be protected from suit or liability for damage, loss,

456 injury or liability caused by a criminal act or the intentional or willful and wanton misconduct of
457 such person.

458 (a) The liability of the Interstate Commission's staff director and employees
459 or Interstate Commission representatives, acting within the scope of their employment or duties
460 for acts, errors or omissions occurring within their state may not exceed the limits of liability set
461 forth under the Constitution and laws of that state for state officials, employees and agents. The
462 Interstate Commission is considered to be an instrumentality of the states for the purposes of any
463 such action. Nothing in this subsection shall be construed to protect such person from suit or
464 liability for damage, loss, injury or liability caused by a criminal act or the intentional or willful
465 and wanton misconduct of such person.

466 (b) The Interstate Commission shall defend the staff director and its
467 employees and, subject to the approval of the attorney general or other appropriate legal counsel
468 of the member state shall defend the commissioner of a member state in a civil action seeking to
469 impose liability arising out of an actual or alleged act, error or omission that occurred within the
470 scope of Interstate Commission employment, duties or responsibilities, or that the defendant had
471 a reasonable basis for believing occurred within the scope of Interstate Commission
472 employment, duties or responsibilities; provided, however, that the actual or alleged act, error or
473 omission did not result from intentional or willful and wanton misconduct on the part of such
474 person.

475 (c) To the extent not covered by the state involved, member state or
476 the Interstate Commission, the representatives or employees of the Interstate Commission shall
477 be held harmless in the amount of a settlement or judgment, including attorney's fees and costs,

478 obtained against such persons arising out of an actual or alleged act, error or omission that
479 occurred within the scope of Interstate Commission employment, duties or responsibilities, or
480 that such persons had a reasonable basis for believing occurred within the scope of Interstate
481 Commission employment, duties or responsibilities; provided, however, that the actual or alleged
482 act, error or omission did not result from intentional or willful and wanton misconduct on the
483 part of such persons.

484 ARTICLE XI. RULEMAKING FUNCTIONS OF THE INTERSTATE COMMISSION

485 (A) The Interstate Commission shall promulgate and publish rules in order to effectively and
486 efficiently achieve the purposes of the compact.

487 (B) Rulemaking shall occur under the criteria set forth in this Article and the by-laws and rules
488 adopted pursuant thereto. Such rulemaking shall substantially conform to the principles of the
489 Model State Administrative Procedures Act, 1981 Act, Uniform Laws Annotated, Vol. 15, p.1,
490 (2000), or such other administrative procedure acts as the Interstate Commission considers
491 appropriate consistent with due process requirements under the United States Constitution as
492 now or hereafter interpreted by the United States Supreme Court. All rules and amendments
493 shall become binding as of the date specified, as published with the final version of the rule as
494 approved by the Interstate Commission.

495 (C) When promulgating a rule, the Interstate Commission shall, at a minimum:

496 (1) publish the entire text of the proposed rule stating the reason for that proposed
497 rule;

498 (2) allow and invite any and all persons to submit written data, facts, opinions and
499 arguments, which information shall be added to the record, and be made publicly available; and

500 (3) promulgate a final rule and its effective date, if appropriate, based on input from
501 state or local officials or interested parties.

502 (D) Rules promulgated by the Interstate Commission shall have the force and effect of
503 administrative rules and shall be binding in the compacting states to the extent and in the manner
504 provided for in this compact.

505 (E) Not later than 60 days after a rule is promulgated, an interested person may file a petition in
506 the United States District Court for the District of Columbia or in the Federal District Court
507 where the Interstate Commission's principal office is located for judicial review of such rule. If
508 the court finds that the Interstate Commission's action is not supported by substantial evidence in
509 the rulemaking record, the court shall hold the rule unlawful and set it aside.

510 (F) If a majority of the legislatures of the member states rejects a rule, those states may by
511 enactment of a statute or resolution in the same manner used to adopt the compact cause that
512 such rule shall have no further force and effect in a member state.

513 (G) The existing rules governing the operation of the Interstate Compact on the Placement of
514 Children superseded by this act shall be null and void no less than 12, but no more than 24
515 months after the first meeting of the Interstate Commission created hereunder, as determined by
516 the members during the first meeting.

517 (H) Within the first 12 months of operation, the Interstate Commission shall promulgate rules
518 addressing the following:

- 519 (1) transition rules;
- 520 (2) forms and procedures;
- 521 (3) time lines;
- 522 (4) data collection and reporting;
- 523 (5) rulemaking;
- 524 (6) visitation;
- 525 (7) progress reports and supervision;
- 526 (8) sharing of information and confidentiality;
- 527 (9) financing of the Interstate Commission;
- 528 (10) mediation, arbitration and dispute resolution;
- 529 (11) education, training and technical assistance;
- 530 (12) enforcement; and
- 531 (13) coordination with other interstate compacts

532 (I) Upon determination by a majority of the members of the Interstate Commission that an
533 emergency exists:

534 (1) The Interstate Commission may promulgate an emergency rule only if it is
535 required to:

536 (a) protect the children covered by this compact from an imminent
537 threat to their health, safety and well-being;

538 (b) prevent loss of federal or state funds; or

539 (c) meet a deadline for the promulgation of an administrative rule
540 required by federal law.

541 (2) An emergency rule shall become effective immediately upon adoption; provided,
542 however, that the usual rulemaking procedures provided hereunder shall be retroactively applied
543 to the emergency rule as soon as reasonably possible, but no later than 90 days after the effective
544 date of the emergency rule.

545 (3) An emergency rule shall be promulgated as provided for in the rules of the
546 Interstate Commission.

547 ARTICLE XII. OVERSIGHT, DISPUTE RESOLUTION, ENFORCEMENT

548 (A) Oversight

549 (1) The Interstate Commission shall oversee the administration and operations of the
550 compact.

551 (2) The executive, legislative and judicial branches of state government in each
552 member state shall enforce this compact and the rules of the Interstate Commission and shall
553 take all actions necessary and appropriate to effectuate the compact's purposes and intent. The
554 compact and its rules shall be binding in the member states to the extent and in the manner
555 provided for in this compact.

556 (3) All courts shall take judicial notice of the compact and the rules in any judicial or
557 administrative proceeding in a member state pertaining to the subject matter of this compact.

558 (4) The Interstate Commission shall be entitled to receive service of process in any
559 action in which the validity of a compact provision or rule is the issue for which a judicial
560 determination has been sought and shall have standing to intervene in any proceedings. Failure to
561 provide service of process to the Interstate Commission shall render any judgment, order or other
562 determination, however so captioned or classified, void as to the Interstate Commission, this
563 compact, its by-laws or rules of the Interstate Commission.

564 (B) Dispute Resolution

565 (1) The Interstate Commission shall attempt, upon the request of a member state, to
566 resolve disputes which are subject to the compact and which may arise among member states and
567 between member and non-member states.

568 (2) The Interstate Commission shall promulgate a rule providing for both mediation
569 and binding dispute resolution for disputes among compacting states. The costs of such
570 mediation or dispute resolution shall be the responsibility of the parties to the dispute.

571 (C) Enforcement

572 (1) If the Interstate Commission determines that a member state has defaulted in the
573 performance of its obligations or responsibilities under this compact, its by-laws or rules, the
574 Interstate Commission may:

575 (a) provide remedial training and specific technical assistance;

576 (b) provide written notice to the defaulting state and other member states, of
577 the nature of the default and the means of curing the default. The Interstate Commission shall
578 specify the conditions by which the defaulting state must cure its default;

579 (c) by majority vote of the members, initiate against a defaulting member
580 state legal action in the United State District Court for the District of Columbia or, at the
581 discretion of the Interstate Commission, in the federal district where the Interstate Commission
582 has its principal offices, to enforce compliance with the provisions of the compact, its by-laws or
583 rules. The relief sought may include both injunctive relief and damages. In the event judicial
584 enforcement is necessary the prevailing party shall be awarded all costs of such litigation
585 including reasonable attorney's fees; or

586 (d) avail itself of any other remedies available under state law or the
587 regulation of official or professional conduct.

588 ARTICLE XIII. FINANCING OF THE COMMISSION

589 (A) The Interstate Commission shall pay, or provide for the payment of the reasonable expenses
590 of its establishment, organization and ongoing activities.

591 (B) The Interstate Commission may levy on and collect an annual assessment from each
592 member state to cover the cost of the operations and activities of the Interstate Commission and
593 its staff which must be in a total amount sufficient to cover the Interstate Commission's annual
594 budget as approved by its members each year. The aggregate annual assessment amount shall be
595 allocated based upon a formula to be determined by the Interstate Commission which shall
596 promulgate a rule binding upon all member states.

597 (C) The Interstate Commission shall not incur obligations of any kind prior to securing the funds
598 adequate to meet that obligation; nor shall the Interstate Commission pledge the credit of any of
599 the member states, except by and with the authority of the member state.

600 (D) The Interstate Commission shall keep accurate accounts of all receipts and disbursements.
601 The receipts and disbursements of the Interstate Commission shall be subject to the audit and
602 accounting procedures established under its by-laws. All receipts and disbursements of funds
603 handled by the Interstate Commission shall be audited yearly by a certified or licensed public
604 accountant and the report of the audit shall be included in and become part of the annual report
605 of the Interstate Commission.

606 ARTICLE XIV. MEMBER STATES, EFFECTIVE DATE AND AMENDMENT

607 (A) Any state is eligible to become a member state.

608 (B) The compact shall become effective and binding upon legislative enactment of the compact
609 into law by no fewer than 35 states. The effective date shall be the later of July 1, 2007 or upon
610 enactment of the compact into law by the thirty-fifth state. Thereafter it shall become effective
611 and binding as to any other member state upon enactment of the compact into law by that state.
612 The governors of non-member states or their designees shall be invited to participate in the
613 activities of the Interstate Commission on a non-voting basis prior to adoption of the compact by
614 all states.

615 (C) The Interstate Commission may propose amendments to the compact for enactment by the
616 member states. No amendment shall become effective and binding on the member states unless
617 and until it is enacted into law by unanimous consent of the member states.

618 ARTICLE XV. WITHDRAWAL AND DISSOLUTION

619 (A) Withdrawal

620 (1) Once effective, the compact shall continue in force and remain binding upon each
621 member state; provided that a member state may withdraw from the compact specifically
622 repealing the statute which enacted the compact into law.

623 (2) Withdrawal from this compact shall be by the enactment of a statute repealing the
624 same. The effective date of withdrawal shall be the effective date of the repeal of the statute.

625 (3) The withdrawing state shall immediately notify the chairperson of the Interstate
626 Commission in writing upon the introduction of legislation repealing this compact in the
627 withdrawing state. The Interstate Commission shall then notify the other member states of the
628 withdrawing state's intent to withdraw.

629 (4) The withdrawing state is responsible for all assessments, obligations and liabilities
630 incurred through the effective date of withdrawal.

631 (5) Reinstatement following withdrawal of a member state shall occur upon the
632 withdrawing state reenacting the compact or upon such later date as determined by the members
633 of the Interstate Commission.

634 (B) Dissolution of Compact

635 (1) This compact shall dissolve effective upon the date of the withdrawal or default of
636 the member state which reduces the membership in the compact to 1 member state.

637 (2) Upon the dissolution of this compact, the compact becomes null and void and shall
638 be of no further force or effect, and the business and affairs of the Interstate Commission shall be
639 concluded and surplus funds shall be distributed in accordance with the by-laws.

640 ARTICLE XVI. SEVERABILITY AND CONSTRUCTION

641 (A) This compact shall be severable, and if any phrase, clause, sentence or provision is deemed
642 unenforceable, the remaining provisions of the compact shall be enforceable.

643 (B) This compact shall be liberally construed to effectuate its purposes.

644 (C) Nothing in this compact shall be construed to prohibit the concurrent applicability of other
645 interstate compacts to which the states are members.

646 ARTICLE XVII. BINDING EFFECT OF COMPACT AND OTHER LAWS

647 (A) Other Laws

648 (1) Nothing herein prevents the enforcement of any other law of a member state that is
649 consistent with this compact.

650 (2) All member states' laws conflicting with this compact or its rules are superseded to
651 the extent of the conflict.

652 (B) Binding Effect of the Compact

653 (1) All lawful actions of the Interstate Commission, including all rules and by-laws
654 promulgated by the Interstate Commission, are binding upon the member states.

655 (2) All agreements between the Interstate Commission and the member states are
656 binding in accordance with their terms.

657 (3) In the event any provision of this compact exceeds the constitutional limits
658 imposed on the legislature of any member state, such provision shall be ineffective to the extent
659 of the conflict with the constitutional provision in question in that member state.

660 ARTICLE XVIII. INDIAN TRIBES

661 Notwithstanding any other provision in this compact, the Interstate Commission may
662 promulgate guidelines to permit Indian tribes to utilize the compact to achieve the purposes of
663 the compact as specified in Article I. The Interstate Commission shall make reasonable efforts to
664 consult with Indian tribes in promulgating guidelines to reflect the diverse circumstances of the
665 various Indian tribes.

666 SECTION 2. The first sentence of section 3 of said chapter 452 is hereby amended by
667 striking out the words “Article V” and inserting in place thereof the following words:- Article
668 VII.

669 SECTION 3. Said chapter 452 is hereby amended by striking out section 4 and
670 inserting in place thereof the following section:-

671 Section 4. The department of children and families shall be the central state compact
672 office under subsection (H) of Article VII of the Interstate Compact on the Placement of
673 Children.

674 SECTION 4. The first sentence of section 5 of said chapter 452 is hereby amended by
675 striking out the words “Article V (b)” and inserting in place thereof the following words:-
676 paragraph (3) of subsection (A) of Article VII and subsection (F) of said Article VII.

677 SECTION 5. Section 6 of said chapter 452 is hereby amended by striking out the
678 words “sections fourteen, fifteen and sixteen of said chapter on hundred and nineteen” and
679 inserting in place thereof the following words:- “the laws of the Commonwealth”.

680 SECTION 6. Said section 6 of said chapter 452 is hereby further amended by striking
681 out the words “Article V (b)” and inserting in place thereof the following words:- “paragraph (3)
682 of subsection (A) of Article VII”.

683 SECTION 7. Section 7 of said chapter 452 is hereby amended by striking out the
684 words “Article VI” and inserting in place thereof the following words;- “paragraph (2) of
685 subsection (A) of Article III”.

686 SECTION 8. Said section 7 of said chapter 452 is hereby further amended by striking
687 out the words “Article V” and inserting in place thereof the following words:- Article IV.

688 SECTION 9. Section 8 of said chapter 452 is hereby repealed.

689 SECTION 10. Sections 2 to 9, inclusive, of this act shall take effect upon the effective
690 date of the new Interstate Compact on the Placement of Children, under section 1.